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PART Env-C 614 FINES RELATING TO WETLANDS

Statutory Authority: RSA 482-A:11, I and RSA 482-A:13

Env-C 614.01 Definitions. For any term used in this part that is defined in RSA 482-A or Wt 100-700, the definition stated therein shall apply to these rules.

Source. #7204, eff 2-24-00

Env-C 614.02 Class I Violations. For the following class I violations not otherwise classified as major or minor impact based upon the resource area or project type, the amount of the administrative fine shall be \$500:

- (a) Unauthorized dredge, removal, or excavation that involves:
 - (1) A total impact of 3,000 square feet or less in a non-tidal swamp or wet meadow that does not involve draining of wetland for lot development, with disturbance to no more than 5 percent of the area of impacted wetlands; or
 - (2) A total impact of 1,000 square feet or less in nonpublic surface waters, including marshes that does not involve fill for lot development;
- (b) Unauthorized fill that involves:
 - (1) A total impact of 3,000 square feet or less in a non-tidal swamp or wet meadow that does not involve fill for lot development, with disturbance no more than 5 percent of the area of impacted wetlands; or
 - (2) A total impact of 10,000 square feet or less in previously developed upland of a tidal buffer zone at least 50 feet from a tidal marsh;
- (c) Unauthorized fill of 50 linear feet or less of areas to the shoreline or bank along the surface waters, calculated as follows:
 - (1) For intermittent streams the distance shall be measured along the thread of the channel; and
 - (2) For perennial streams or rivers, the total disturbance shall be determined by summing the lengths of disturbances to the channel and the banks;
- (d) Unauthorized construction or modification of a seasonal pier, wharf, or other similar docking structure listed under Wt 402, with 2 or less slips, including pre-existing slips;
- (e) Unauthorized construction or modification of a seasonal canopy listed under Wt 402, covering a maximum area of 300 square feet;
- (f) Unauthorized repair or replacement of a nontidal retaining wall or other shoreline protection structure involving no change in height, length, location, or configuration, and maximum refacing of 6 inches in thickness; and
- (g) Any other unauthorized project that:
 - (1) Does not exceed the criteria in (a) through (f), above; and
 - (2) Qualifies as minimum impact under Wt 101.50 and Wt 303.04.

Source. #7204, eff 2-24-00

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Env-C 614.03 Class II Violations. For the following class II violations not otherwise classified as major impact based upon the resource area or project type, the amount of the administrative fine shall be \$1,000:

- (a) Unauthorized dredge, removal, or excavation that involves:
 - (1) A total impact of 12,000 square feet or less in a non-tidal swamp or wet meadow that exceeds the criteria for a class I violation and does not involve draining of the wetland for lot development; or
 - (2) A total impact of 1,000 square feet or less provided the material removed is rocks or roadside sand or sediment as maintenance dredge performed with hand tools in a surface water and is done during low flow and causes no turbidity to the water; or
 - (3) A total impact of 20,000 square feet or less in previously developed upland of a tidal buffer zone at least 50 feet from a tidal marsh;
- (b) Unauthorized fill that involves:
 - (1) A total impact of 12,000 square feet or less in a non-tidal swamp or wet meadow that exceeds the criteria for a class I violation and does not involve fill for lot development; or
 - (2) A total impact of 1,000 square feet or less in nonpublic surface waters, including marshes that does not involve fill for lot development; or
 - (3) A total impact of 20,000 square feet or less in previously developed upland of a tidal buffer zone at least 50 feet from a tidal marsh;
- (c) Unauthorized alteration or disturbance of less than 100 linear feet of shoreline or bank along surface waters, not otherwise classified as major impact based upon the resource area or project type, calculated as follows:
 - (1) For intermittent streams the distance shall be measured along the thread of the channel; and
 - (2) For perennial streams or rivers, the total disturbance shall be determined by summing the lengths of disturbances to the channel and the banks;
- (d) Unauthorized construction or modification of a pier, wharf, or other similar docking structure listed under Wt 402, provided:
 - (1) For permanent structures, the structure contains no more than 2 slips, including previously existing slips; and
 - (2) For seasonal structures, the structure contains 3 or 4 slips, including previously existing slips;
- (e) Unauthorized construction or modification of a seasonal canopy listed under Wt 402, covering a maximum area of more than 300 and less than 600 square feet;
- (f) Unauthorized construction or modification of a nontidal retaining wall or other shoreline protection structure involving no change in height, length, location, or configuration, and maximum refacing of 6 inches in thickness; and
- (g) Any other unauthorized project that:

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- (1) Does not exceed the criteria in (a) through (f), above; and
- (2) Qualifies as minor impact under Wt 101.51 and Wt 303.03.

Source. #7204, eff 2-24-00

Env-C 614.04 Class III Violations. For the following class III violations, the amount of the administrative fine shall be \$1,500:

- (a) Unauthorized dredge, removal, or excavation that involves:
 - (1) A total impact of more than 12,000 and less than 20,000 square feet in a nontidal swamp or wet meadow that does not involve draining of wetlands for lot development; or
 - (2) A total impact of more than 20,000 square feet in previously developed upland of a tidal buffer zone within 50 feet of a tidal marsh;
- (b) Unauthorized fill that involves:
 - (1) A total impact of more than 12,000 and less than 20,000 square feet in a non-tidal swamp or wet meadow that does not involve fill for lot development; or
 - (2) A total impact of more than 1,000 and less than 5,000 square feet in non-public surface water, including marshes that does not involve fill for lot development;
- (c) Unauthorized alteration or disturbance of between 100 and 200 linear feet of shoreline or bank along surface waters, not otherwise classified as major impact based upon the resource area or project type;
- (d) Unauthorized construction or modification of a permanent pier, wharf, or other similar docking structure listed under Wt 402, with a total of 3 or 4 slips, including previously existing slips;
- (e) Unauthorized repair or replacement of a nontidal retaining wall or other shoreline protection structure involving refacing of more than 6 inches in thickness; and
- (f) Any other unauthorized projects that:
 - (1) Exceeds the criteria for class II violations;
 - (2) Does not exceed the criteria in (a) through (e), above; and
 - (3) Qualifies as minor impact under Wt 101.51 and Wt 303.03.

Source. #7204, eff 2-24-00

Env-C 614.05 Class IV Violations. For the following class IV violations, the amount of the administrative fine shall be \$2,000:

- (a) Unauthorized dredge, removal, or excavation that involves:
 - (1) A total impact of 20,000 square feet or more in a swamp or wet meadow that exceeds the criteria for a class III violation;
 - (2) Any work, regardless of square foot amount, in undeveloped upland of a tidal buffer; tidal wetlands, flats, or waters; bogs; or in or adjacent to prime wetlands;
 - (3) Any work in public waters;

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- (4) Any work within the shoreline or in a designated river;
- (5) Disturbance to a jurisdictional area that has been identified by the natural heritage inventory - department of resources and economic development as an exemplary natural community, or has documented occurrences of endangered or threatened wildlife under the Endangered Species Conservation Act pursuant to RSA 212-A or has documented occurrence species of special concern identified by the New Hampshire Fish and Game Department Nongame Wildlife Program; or
- (6) Any dredge, removal, excavation, or building construction in wetlands for lot development;
- (b) Unauthorized fill that involves:
 - (1) A total impact of 20,000 square feet or more in a nontidal swamp or wet meadow that exceeds the criteria for a class III violation;
 - (2) Any fill or building construction in wetlands for lot development;
 - (3) Any work in undeveloped upland of a tidal buffer zone; tidal wetlands, flats, or waters; bogs; or in or adjacent to prime wetlands;
 - (4) Any fill in public waters or rivers;
 - (5) Any work within the shoreline or in a designated river; or
 - (6) Any work in a wetland, surface water, or shoreline that contains or is used as cover, nesting, or foraging by a threatened or endangered species as defined by federal or state law;
- (c) Unauthorized alteration or disturbance of more than 200 linear feet of surface waters measured along the shoreline or banks, calculated as follows:
 - (1) For intermittent streams the distance shall be measured along the thread of the channel; and
 - (2) For perennial streams or rivers, the total disturbance shall be determined by summing the lengths of disturbances to the channel and the banks;
- (d) Unauthorized construction or modification of a pier, wharf, or other similar docking structure listed under Wt 402, with more than 4 slips, including previously existing slips;
- (e) Unauthorized construction or modification of:
 - (1) A seasonal canopy approvable under Wt 402 covering a maximum area of more than 600 square feet; or
 - (2) A permanent canopy or boathouse over the water;
- (f) Unauthorized construction or modification of a nontidal retaining wall or other shoreline protection structure involving change in height, length, location, or configuration, or involves refacing of more than 6 inches in thickness;
- (g) Unauthorized destruction, razing, defacing, reduction of, alteration of, or building upon sand dunes or removal of sand or vegetation from any sand dunes except for as provided by RSA 482-A:3, VII;
- (h) Failing to use or maintain appropriate siltation and erosion control devices for any construction project in or adjacent to surface waters or prime wetlands;

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- (i) Any other unauthorized project that exceeds the criteria for class III violations;
- (j) Failing to comply with any requirement of a settlement agreement pertaining to a wetlands violation;
- (k) Failing to submit an application or comply with other conditions as specified on the wetlands bureau emergency authorization form per Wt 503.01;
- (l) Failing to install, use, or maintain appropriate siltation or erosion control devices, turbidity curtains, or booms for any construction project located in wetlands jurisdiction, resulting in water quality violations; or
- (m) Failing to comply with notification, filing, or other specific permit conditions that do not fall into any of the above-listed criteria.

Source. #7204, eff 2-24-00

Env-C 614.06 Extraordinary Violations. For the following extraordinary violations, the amount of the administrative fine shall be \$2,000, regardless of any other classification of the violation:

- (a) Misrepresenting facts material to issuance of a permit or waiver, or in connection with a violation;
- (b) Committing repeated violations on the same or different property or project;
- (c) Committing a violation following denial of a permit;
- (d) Failing to comply with any mitigation requirements such as restoring, creating, or enhancing wetlands or creating or conveying conservation easements;
- (e) Failing to comply with an order issued pursuant to RSA 482-A:6; and
- (f) Failing to comply with permit conditions or other requirements, which taken cumulatively constitute a complete disregard of applicable requirements, proper construction techniques, or best management practices.

Source. #7204, eff 2-24-00

Env-C 614.07 Violations Relating to Posting, Signing, and Recording Permits. For the following violations, the amount of the administrative fine shall be \$500:

- (a) Failing to post a permit as specified by RSA 482-A:12;
- (b) Failing to sign a permit; and
- (c) Failing to record a permit or document with the registry of deeds.

Source. #7204, eff 2-24-00

Env-C 614.08 Multiple Violations. The commissioner shall assess separate fines against a party for unauthorized work performed on a given property for:

- (a) Unauthorized work consisting of multiple violations of RSA 482-A or Wt 100 - 700;

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(b) Unauthorized work impacting 2 or more distinct resource areas under the jurisdiction of the department, even if the resource areas are contiguous or hydrologically connected, for example marshes, swamps, bogs, rivers, streams, ponds, lakes, banks, upland tidal buffer zones, and sand dunes;

(c) Unauthorized work carried out over a period of time, where each day's unauthorized work shall be a separate violation; or

(d) Unauthorized work constituting violations of separate conditions of a permit, order, or approval.

Source. #7204, eff 2-24-00